

1<sup>st</sup> reading: January 26, 2010  
2<sup>nd</sup> reading: \_\_\_\_\_  
Date Adopted: \_\_\_\_\_  
Date Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF PIERRE, SOUTH DAKOTA, ADOPTING ORDINANCES OF THE CITY BY ESTABLISHING THE PROCEDURE FOR THE ISSUANCE AND REGULATION OF ON-SALE LICENSES FOR FULL-SERVICE RESTAURANTS IN THE CITY OF PIERRE, SOUTH DAKOTA, AS SET FORTH IN SECTION 10, ALCOHOLIC BEVERAGES.

BE IT ORDAINED BY THE CITY OF PIERRE, SOUTH DAKOTA:

*Section 1. That Section 10-2 of the Revised Ordinances of Pierre, South Dakota, is hereby amended to read as follows:*

Section 10-2-105. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Alcoholic beverage, wine, malt beverage, and distilled spirits* and other such words and terms mean the same as the definitions given them by SDCL 35-1-1.

*Bar*, any permanently installed counter within the restaurant area from which alcoholic beverages are regularly served to customers by a person who is tending bar or drawing or mixing alcoholic beverages;

*Full-service restaurant*, any restaurant at which a waiter or waitress delivers food and drink offered from a printed food menu to patrons at tables, booths, or the bar. Any restaurant that only serves fry orders or foodstuffs such as sandwiches, hamburgers, or salads is not a full-service restaurant;

*Restaurant*, any area in a building maintained, advertised, and held out to the public as a place where individually priced meals are prepared and served primarily for consumption in such area and where at least sixty percent of the gross revenue of the restaurant is derived from the sale of food and nonalcoholic beverages. The restaurant shall have a dining room or rooms, a kitchen, and the number and kinds of employees necessary for the preparing, cooking, and serving of meals.

*Section 2. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-106 to read:*

Section 10-2-106. License application requirements.

An applicant for a full-service restaurant on-sale license shall provide sufficient documentation to the municipality with an application form provided by the municipality to prove that the primary source of revenue from the operation of the restaurant will be derived from the sale of prepared food and nonalcoholic beverages and not from the sale of alcoholic beverages. The supporting documentation concerning the primary source of revenue submitted pursuant to this section is confidential.

*Section 3. That the Revised Ordinance of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-107 to read:*

Section 10-2-107. Annual reports.

When renewing, the full-service restaurant on-sale licensee shall submit an annual report and supporting documentation to the city on forms provided by the city of the annual sales of the full-service restaurant, which includes an oath verifying the validity of the information provided in the report. The report and the supporting documentation submitted pursuant to this section are confidential. The report shall contain the annual gross revenues of the licensee for the following two categories:

- (i) Food and nonalcoholic beverage gross revenues; and
- (ii) Total gross revenues.

*Section 4. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-108 to read:*

Section 10-2-108. License renewals.

The license will need to be renewed annually and shall be subject to license renewal fees as provided in SDCL §35-4-2(4). The renewal shall be conditioned upon the city receiving documentation deemed adequate by it that at least sixty percent of the total gross revenue of the full service restaurant within the preceding twelve (12) months operation was derived from the sale of food and nonalcoholic beverages. This percentage must be met or the license will not be renewed.

*Section 5. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-109 to read:*

Section 10-2-109. Only retail, on-sale service permitted.

A full-service restaurant on-sale licensee may only serve alcoholic beverages for on-premise consumption in the bar and dining room of area of the restaurant.

*Section 6. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-110 to read:*

Section 10-2-110. Smoking prohibited.

No licensee that has a full-service restaurant on-sale license may allow smoking on the licensed premises.

*Section 7. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-111 to read:*

Section 10-2-111. Full-service restaurant license fees.

Pursuant to state law, the city may issue additional on-sale licenses to full-service restaurants for a fee of at least one dollar for each person residing within the municipality as measured by the last preceding decennial federal census. The license fee shall be established by ordinance within ninety (90) days of the initial adoption of this ordinance or within thirty (30) days after the resolution of any appeal provided for in this ordinance. Subsequent changes in the license fee shall not be made for a period of ten (10) years from the effective date of adoption of this ordinance unless a population growth reported by the federal decennial census requires an increase in the fee.

*Section 8. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-112 to read:*

Section 10-2-112. Price of full-service restaurant on-sale license – current fair market value.

- (1) As required by state law, the price charged for a full-service on-sale restaurant license shall be at or above the current fair market value for such license as determined herein. However, any fair market value so established shall be a minimum of one dollar for each person residing within the city as measured by the last preceding decennial federal census.
- (2) For purposes of this ordinance, the term “current fair market value” means the documented price of the on-sale license most recently sold between January 1, 2003, and January 1, 2008, through an arm’s length transaction, less the value of any real or personal property included within the transaction. Any existing license can contest the fair market value determination to circuit court. The City may, in its sole discretion, also consider the information reported in subpart (3) hereof in its establishment of fair market value.
- (3) Within 30 days of the effective date of this ordinance and as required by state statute, each licensee within the city who owns an on-sale license issued pursuant to SDCL 35-4-2(4) as of January 1, 2008, and who purchased the license or had the license transferred to such licensee at any time between January 1, 2003, and January 1, 2008, shall report the amount originally paid for the on-sale license to the city’s auditor’s office on forms provided by the city. The city may in its discretion also request other licensees to also report under oath the amount it originally paid for the on-sale license. Any form submitted pursuant to this provision shall be signed under oath and shall include the documents establishing the amount originally paid for the on-sale license. If the

transaction for the purchase of the on-sale license included real or personal property, the full market value of the real or personal property on the date of the original sale shall be deducted from the total transaction price to determine the amount paid by the licensee for the on-sale license. The burden of establishing the amount paid for the license shall be on the licensee. Any documentation submitted pursuant to this section shall remain confidential, unless and until a hearing is conducted pursuant to Section 10-2-113. Any licensee contesting the fair market value of the real and personal property may appeal the valuation adopted by the city to circuit court.

*Section 9. That the Revised Ordinance of Pierre, South Dakota, are hereby amended by adding a section to be number 10-2-113 to read:*

Section 10-2-113. Licensee's right to contest price established for license fee.

If the amount reported by the licensee or licensees under Section 10-2-112 is used to determine current fair market value of a restaurant license to be issued under this ordinance, any licensee who contends that the amount does not accurately reflect the fair market value of the license on the date of purchase may file an objection to the report. The objection shall be filed with the city within thirty days of the date the license fee is set pursuant to Section 10-2-111 or Section 10-2-112 hereof. If an objection is filed, the City Commission shall conduct a hearing to determine the fair market value of the license. The determination of the City Commission may be appealed to circuit court.

*Section 10. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-114 to read:*

Section 10-2-114. Registry of on-sale licenses.

The city shall maintain a registry of each on-sale license that is being offered for sale at the price established in Section 10-2-111 or Section 10-2-112 of the Revised Ordinances of the City of Pierre, and the city shall furnish a copy of the registry to anyone who requests a new full-service restaurant on-sale license. The existing on-sale licensees are responsible for registering with the city that an on-sale license is for sale.

*Section 10. That the Revised Ordinances of Pierre, South Dakota, are hereby amended by adding a section to be numbered 10-2-115 to read:*

Section 10-2-115. Issuance of new full-service restaurant licenses restricted.

The city may only issue a new license pursuant to this ordinance if no on-sale license is on the registry established by Section 10-2-114 or a person desiring to purchase an on-sale license listed on the registry provides documentation showing that the person is unable to purchase the on-sale license at the price established in Section 10-2-111 or 10-2-112 of the Revised Ordinances of the City of Pierre, and on terms satisfactory to both the potential buyer and seller. Any on-sale license registered as "for sale" with the city shall be sold at the current fair market value price set

by the city pursuant to an ordinance adopted in accordance with Section 10-2-111 or 10-2-112 of the Revised Ordinances of the City of Pierre.

Date adopted: \_\_\_\_\_.

\_\_\_\_\_  
Mayor

ATTEST:

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Finance Officer